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April 28, 1993

FEDERAL EXPRESS

Ms. Rebecca Frey
Remedial Response Branch (HSRL-6J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Mark Radell, Esq.
U.S. EPA, Region 5
230 South Dearborn Street
Chicago, IL 60604

Re: West Chicago Superfund Sites

Dear Rebecca and Mark:

I appreciate your willingness to meet with the various representatives of the Kerr-McGee Chemical Corporation ("Kerr-McGee") last week. If you have any questions about the various problems that we raised with regard to Region 5's proposed plans for the West Chicago Superfund Sites, please contact me and I will assure that you receive a prompt response. In the meantime, I am writing to pursue a few items that were raised at the meeting.

1. As we explained, the IDNS background gamma standard is anomalous -- we are not aware of any similar federal or state standard -- and appears to be the result of a miscommunication between the IDNS and the NRC. See Comments of Kerr-McGee Chemical Corporation on the Action Criteria for Superfund Removal Actions, West Chicago, Illinois and the Associated Fact Sheet, Exhibit 9 (Mar. 29, 1993) (hereinafter "Kerr-McGee Comments"). I had written to IDNS to inform that agency of the error and, as I mentioned, the IDNS responded by stating that it was undertaking a review of the matter. I enclose a recent letter I have received from the IDNS stating that the agency is continuing to consider whether to initiate a rulemaking or to apply its exemption power to correct the problem.

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Although the IDNS does not foreclose the possibility that it might modify its regulations, the agency expresses concern about such an action under circumstances in which compliance with the standard does not appear to raise any particular challenges at the licensed site. This observation, of course, serves only to reinforce the fact that the gamma standard -- which will have severe implications for the off-site cleanups -- can not properly be viewed as an ARAR. See id. at 15-23. The IDNS regulation does not operate as a cleanup criterion at the West Chicago Facility and it should not be applied as one at the off-site areas.

2. At our meeting we discussed the practical problems that are associated with the criterion relating to indoor radon decay product concentrations. If this standard were (incorrectly) construed to apply to total radon (radon-222 plus radon-220 ("thoron")), then it is likely that as many as 50 percent of homes in the West Chicago area will exceed the criterion for reasons unrelated to tailings. See id. at 37-39 & Exhibit 22. We do not believe that any criterion relating to indoor decay products is necessary or appropriate given the disposition of tailings in the West Chicago area, but if Region 5 continues to seek to pursue such a criterion, it should focus solely on thoron, the form of radon that is released by thorium tailings. See id. at 35-36.

Larry Jensen mentioned at the meeting that the application of the decay-product limit to thoron alone might present some technical challenges. I stated that Kerr-McGee was prepared to provide technical assistance and, as I recall, Larry stated that you would take the matter under consideration. Let me know if Kerr-McGee's help on this point would be welcome and useful.

3. We stated at the meeting that Kerr-McGee is prepared to cooperate with EPA in connection with the use of the West Chicago Facility as a storage location for off-site tailings. As we understand the situation, Kerr-McGee must obtain a license from the IDNS for such a use. We are prepared to attend a meeting with you and IDNS at which we can discuss the application and licensing requirements associated with the use of the Facility for storage.

4. Kerr-McGee has criticized the "Review Draft" of the Action Criteria for its failure to provide information as to how the criteria would in fact be applied. See Kerr-McGee

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Comments, 49-54. For example, compliance with the radium-in-soil criterion could require an extensive and unjustified drilling program. At the meeting Larry Jensen responded that the Action Criteria contained a typographical error and that, as a result, the document failed to include language stating that Region 5 planned to take two soil samples on each property at the points of maximum gamma readings. However, you were not able to provide further information about the program.

In our view, the guidance that Region 5 provides concerning the conduct of removal actions is perhaps as significant as the criteria that are selected. The following questions are merely illustrative of the issues that must be addressed:

- What grid size will be used for the gamma surveys? At what height will the measurements be made?
- Will soil sampling be required at properties that do not have elevated gamma readings?
- When will more than two samples be required?
- How will the samples be collected (depths, equipment, etc.)?
- Will testing for conformance with the radium-in-soil standard be accomplished using field gamma readings (once a correlation between gamma readings and radium concentrations has been derived), or will laboratory analysis be required? If the latter, what type of analysis?
- How will Region 5 assure that only sites contaminated by tailings are remediated?
- How will Region 5 assure that only tailings (and associated soils) are excavated? (Envirocare can not accept other types of wastes for disposal.)
- Does Region 5 intend to follow the guidance in EPA's national regulations that "[r]emedial action will generally not be necessary where [tailings] have been placed semi-permanently in a location where site-specific factors limit their hazard and from

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which they are costly or difficult to remove, or where only minor quantities of [tailings] are involved"? 40 C.F.R. § 192.21(c); see Kerr-McGee Comments, 57-61. If so, how will this flexibility in fact be achieved?

All of these questions have a bearing on the practical feasibility of the criteria, but have not yet been disclosed. Because of Kerr-McGee's extensive experience in the surveying of the West Chicago area, we would welcome the opportunity to comment on these and related matters.

5. Larry Jensen mentioned at the meeting that he had supervised the surveying and cleanup program in the mid-1980s and even had directed that further excavation be conducted at certain sites. In light of this extensive Region 5 involvement with the past surveying and cleanup effort and the expense associated with the repetition of that program, we suggest that Region 5 look into alternatives to the detailed ground-based surveying described in the Action Criteria. For example, Mark Krippel mentioned at the meeting that aerial surveys undertaken by the IDNS had proven to be remarkably accurate in identifying even small pockets of contamination. We believe that Region 5 should seek information from IDNS as to the accuracy and sensitivity of the aerial data.

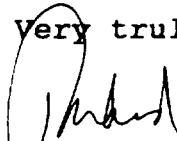
6. You stated at the meeting that Region 5 contemplated the completion of the cleanup of the residential sites in a removal action and that no remedial action would then be undertaken. It is Kerr-McGee's view that any removal actions should be narrowly focused on those few properties that were not surveyed and, as necessary, cleaned up as part of the cleanup program in the mid-1980s. If Region 5 continues to believe that further response actions are necessary at properties that were subject to the past surveying and cleanup program, we urge EPA to comply with the National Contingency Plan and to conduct a remedial investigation/feasibility study for the properties. Such an approach will provide procedural and substantive safeguards against unwarranted response actions.

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Please feel free to contact me if you would like to discuss any of these points. In the meantime, I would appreciate it if you would enter a copy of this letter in the administrative record that EPA has established for the West Chicago Superfund Sites.

Very truly yours,



Richard A. Meserve
Counsel for Kerr-McGee
Chemical Corporation

Enclosure

cc: Mr. Valdus V. Adamkus
David A. Ullrich
Gary M. Schafer

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April 23, 1993

Mr. Richard A. Meserve
Covington & Burling
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P.O. Box 7566
Washington, D.C. 20044

Dear Mr. Meserve:

I am writing to provide you with an update of the Department's consideration of your letter of March 23, 1993, in which you suggested that the Department might initiate a rulemaking or apply its exemption power. As stated in my letter of March 29, 1993, the Department considered your letter to be a petition for modification of rules of the Department. We have not completed the review of your request so we cannot advise you at this time of its final disposition. Because we have not commenced a rulemaking before April 23, 1993, you may consider the request denied. We are also giving further consideration to the suggestion that the Department exercise its power to grant exemptions. For reasons discussed below, however, it does not appear at this time that it would be appropriate to grant Kerr-McGee an exemption with regard to matters outside Kerr-McGee's license. If that license were to be amended to include activities other than at the facility site, the issue would of course be different.

I would like to raise several points that you may wish to consider as the Department completes the review of your request. First, as you recognized in your letter, the regulation at issue (32 Ill. Adm. Code §332.150(b)(2)) pertains to "the licensed site, other than the buildings and disposal area." While Kerr-McGee is licensed by the Department for the West Chicago Rare Earths Factory Site, that license does not presently extend to the West Chicago Superfund sites. It does not appear from your letter that the regulation at issue poses insurmountable problems with regard to Kerr-McGee's activities at the factory site. We are reluctant to amend a duly adopted regulation due to a potential problem not directly related to the Department's licensing activities. Additionally, I question whether we would have sufficient legal authority to grant an exemption from a licensing regulation upon the request of a licensee not directly affected by the regulation. In light of your considerable knowledge of administrative law, perhaps you are aware of some legal authority on this issue.



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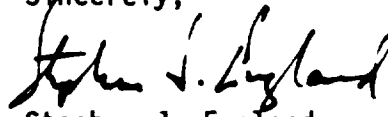
Second, as you are aware, the U.S. Nuclear Regulatory Commission (NRC) reviewed and approved the Department's regulations as part of the process of approving the 1990 amendment to the agreement between the State of Illinois and the NRC under Section 274 of the Atomic Energy Act. The NRC correctly noted that Illinois' standards differ in some respects from the NRC's standards. The NRC evaluated the differing standards in general, without reference to a particular site, and determined that those standards were adequate for purposes of amending the agreement. Any proposed action by the Department, with regard to a specific site, applying standards different from the NRC's standards or granting of exemptions from requirements established by the Department requires the Department to notify NRC to allow NRC to carry out its responsibilities under Section 274o of the Atomic Energy Act. If we decide that it is appropriate to take one of the actions you suggested, it may be necessary for the Department to consult with the NRC regarding the applicability of the Section 274o process.

Third, since the U.S. Environmental Protection Agency (EPA) has determined the Department's regulations to be "relevant and appropriate" but not "applicable" to the West Chicago Superfund sites, it is not clear to me that taking one of the courses you suggested will actually have any effects other than expending public resources.

Fourth, the Department is committed to working with both Kerr-McGee and the EPA, as well as other interested parties, to obtain a solution to the problems of the thorium wastes in and around West Chicago, in as timely a matter as possible, in order to protect the public health and safety. We appreciate Kerr-McGee's cooperation in this effort. Rulemaking is a time-consuming process and we are reluctant to commence a rulemaking that may not really be necessary if it just causes further delay in the effort to clean up the thorium wastes in and around West Chicago.

I welcome your thoughts on these matters. In the meantime we will complete our review of the matters raised in your letter.

Sincerely,



Stephen J. England
Chief Legal Counsel

SJE:las

cc: Tom Ortziger	Joe Klinger
Gordon Appel	Mark Radell
Rich Allen	Harold R. Denton
Wayne Kerr	Robert M. Bernero
Betsy Salus	